Supreme Court, U.S.
FILED

98 1757 MAY 3

THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1998

SOLOMON UPSHAW,

Petitioner,

vs.

U.S. DEPARTMENT OF TRANSPORTATION, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

PETITION FOR WRIT OF CERTIORARI

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38pp

QUESTION PRESENTED

Whether I.C.C. Termination Act. Pub. L. No. 104-88, Stat. 802 (1995), is directed against person or persons holding I.C.C. Authority?

List of Parties

U Transport Corp.
U Transport Logistics
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U.S. Attorney, Suite 9200
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Rodney E. Slater
Secretary of Transportation
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Washington, D.C. 20590

List of Parties – Continued

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U.S. Department of Transportation
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PETITION FOR WRIT OF CERTIORARI

Solomon Upshaw petitions for a writ of certiorari to review the judgment of United States Court of Appeals entered in this case on April 8, 1999. The United States Court of Appeals has decided an important question of federal law that has not been, but should be settled by this Court.

OPINION BELOW

United States Court of Appeals for the first Circuit judgment Entered: April 8, 1999, dismissal of suit without prejudice. A-1-2.

United States Court of Appeals Order of Court *affirm* the dismissal of claims against the Secretary of Transportation Entered: November 13, 1998 A-3 First Circuit.

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United States Court of Appeals 1st. Cir. NOTICE ORDER OF COURT ENTERED: September 28, 1998 A-5 First Circuit.

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JURISDICTION

Jurisdiction in the Supreme Court of the United States is invoked pursuant to CHAP. 382 – An act to amend an act entitled "An act to regulate commerce,"

Section 16., (1889). If the subject in the dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. United States Court of Appeals for the First Circuit Judgment Entered: April 8, 1999.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States, Article 1.

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

ARTICLE 1.

SECTION 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several states and with the Indian tribes:

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post-offices and post-roads:

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the supreme court:

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations:

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions:

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful building: And,

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

ARTICLE I.

SECTION 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importations, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any president, emolument, office, or title, of any kind whatever, from any king, prince or foreign state.

Article 1.

SECTION 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, excepts what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

AMENDMENT V.

No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT XI

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state.

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

TITLE 49 – TRANSPORTATION

§ 10924 Licenses of motor carrier brokers

(b) The Interstate Commerce Commission shall issue, subject to Section 10927(b) of this title, a license to a person authorizing the person to be a broker for transportation of property (other than household goods) subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, of the Commission finds that the person is fit, willing and able –

(1) to be a broker for transportation to be authorized by license and

(2) to comply with this subtitle and regulations of the Commission.

(c)(1) The broker may provide the transportation itself only if the broker also has been issued a certificate or permit to provide the transportation under this subchapter. A broker may use only the transportation of a motor carrier holding a certificate or permit issued under this subchapter.

(2) This subsection does not apply to a motor carrier having a certificate or permit issued under this subchapter or to an employee or agent of motor carrier to the extent the transportation is to be provided entirely by the motor carrier, with other motor carriers holding certificates or permit, or with rail, express, or water common carriers.

§ 10927. Security of motor carriers, brokers, and freight forwarders

(b) The Commission may issue a broker's license to a person under section 10924 of this title only if the person files with the Commission a bond, insurance policy, or other type of security approved by the Commission to ensure that the transportation for which a broker arranges is provided. The license remains in effect only as long as the broker complies with this subsection.

49 U.S.C.
§ 13905. Effective periods of registration

(a) Person holding ICC authority – Any person having authority to provide transportation or service as a motor,

freight forwarder, or broker under this title, as in effect on the day before the effective date of this section, shall be deemed, for purposes of this part, to be registered to provide such transportation or service under this part.

§ 13906(b). Broker requirements – The Secretary may register a person a broker under section 13904 only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary to ensure that the transportation which a broker arranges is provided. The registration remains in effect only as long as the broker continues to satisfy the security requirements of this subsection.

CHAP. 104 An act to regulate commerce (1887)

I.C.C. Broker are subject to this section of the act.

Chap. 104 Section 2., An act to regulate commerce. "That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect or receive from any person or persons a greater or less compensation for any services rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful." Approved February 4, 1887.

CHAP. 104 Section 9. – That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction, but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedures herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, offer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and compel any director, officer, receiver, trustee, or agent of corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit, the claim that any such testimony or evidence may tend to criminate the person giving such evidence or testimony shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Ch. 382 Sec. 16

"Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premise; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be

made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall

not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

"If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement, to apply in a summary way by petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial of the findings of fact of said Commission as set forth in its report shall be prima facie evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing, then the court shall try the issues in said cause and render its judgment thereon. If the subject in dispute

shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. If the judgment of the circuit court shall be in favor of the party complaining, he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session."

49 C.F.R. 1043.4

§ 1043.4 Property broker surety bond or trust fund.

(a) Security.

A property broker must have a surety bond or trust fund in effect for $10,000. The Commission will not issue a property broker license until a surety bond or trust fund for the full limits of liability prescribed herein is in effect. The broker license shall remain valid or effective only as long as a surety bond or trust fund remains in effect and shall ensure the financial responsibility of the broker. (b) Evidence of Security. Evidence of a surety bond must be filed using the Commission's prescribed Form BMC 84. Evidence of a trust fund with a financial institution must be filed using the Commission's prescribed Form BMC 85. The surety bond or the trust fund shall ensure the financial responsibility of the broker by providing for payments to shippers or motor carriers if the broker fails

to carry out its contracts, agreements, or arrangements for the supplying of transportation by authorized motor carriers.

(c) Financial institution – when used in this section and in forms prescribed under this section, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, shall mean – Each agent, agency, branch or office within the United States of any person, as defined by the Interstate Commerce Act, doing business in one or more of the capacities listed below:

(1) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));

(2) A commercial bank or trust company;

(3) An agency or branch of a foreign bank in the United States;

(4) An insured institution (as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a);

(5) A thrift institution (saving bank, building and loan association, credit union, industrial bank or other);

(6) An insurance company;

(7) A loan or finance company; or

(8) A person subject to supervision by any state or federal bank supervisory authority.

(d) Forms and Procedure – (1) Forms for broker surety and trust agreements. Form BMC-84 broker surety bond will be filed with the Commission for the full security limits under subsection (a); or Form BMC-85 broker trust

fund agreement will be filed with the Commission for the full security limits under paragraph (a) of this section.

(2) Broker surety bonds and trust fund agreements in effect continuously. Surety bonds and trust fund agreement shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided.

(i) Cancellation notice. The surety bond and the trust fund agreement may be canceled as only upon 30 days written notice to the Commission, on prescribed Form BMC 36, by the principal or surety for the surety bond, and on prescribed Form BMC 85, by the trust or/broker or trustee for the trust fund agreement. The notice period commences upon the actual receipt of the notice at the Commission's Washington, D.C. office.

(ii) Termination by replacement. Broker surety bonds or trust fund agreements which have been accepted by the Commission under these rules may be replaced by other surety bonds or trust fund agreements, and the liability of the retiring surety or trustee under such surety bond or trust fund agreements shall be considered as having terminated as of the effective date of replacement surety bond or trust fund agreement. However, such termination shall not affect the liability of the surety or the trustee hereunder for the payment of any damages arising as the result of contracts, agreements or arrangements made by the broker for the supplying of transportation prior to the date such termination becomes effective.

(3) Filing and copies. Broker surety bonds and trust fund agreements must be filed with the Commission in duplicate.

Designation of process agent
49 C.F.R. § 1044.4 Required States

(a) Motor carriers – Every motor carrier (of property or passengers) shall make a designation for each State in which it is authorized to operate and for each State traversed during such operation. Every motor carrier (including private carriers) operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

(b) Brokers. Every broker shall make designation for each State in which its offices are located or in which contracts will be written.

U.S. Supreme Court cases that support,

"In [EX PARTE YOUNG, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908)] the Minnesota legislature passed a law reducing railroad rates, and providing very severe penalties for any railroad which failed to comply. [S]tockholders of nine railroads brought suits in federal court to enjoin the companies of which they were stockholders from complying with the law. They alleged that the rates prescribed by the new law were unjust, and confiscatory, and would deprive the companies of their property without due process of law, contrary to the Fourteenth Amendment, but the penalties under the law were such that the railroads, if not restrained would comply with it. Among other defendants they included Edward T. Young, the Attorney General of Minnesota, and prayed that he be restrained from seeking to enforce the law. This relief was given over Young's objection that

the suit was in fact a suit against the state, to which the state had not consented, and thus barred by the Eleventh Amendment. The Court held that the injunction against Young was proper."

"The use of the name of the state to enforce an unconstitutional act to the injury of the complainants is a proceeding without the authority of, and one which does not affect, the state in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official. If the act which the state attorney General seeks to enforce be a violation of the federal constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subject in his person to the consequences of his individual conduct." Justice Peckham, for the Court, announced the rule which has since been repeatedly followed.

STATEMENT OF THE CASE

Interstate Commerce Commission Termination Act of 1995, delegation Unconstitutional legislation effective January 1, 1996, to Secretary of Transportation and Federal Highway Administration, Department of Transportation, and private person(s) American Traffic Exchange, Inc., Trustee E.M. Morgan, David Carney, Trust Adminis., California Factors & Finance and Financial Institution, and Insurance Companies without Interstate Commerce Commission to Regulate Interstate Commerce. I.C.C. Termination Act, Pub. L. No. 104-88, Stat. 803,

49 U.S.C. § 13904 delegated licensing, insurance, and rights to the defendants who deprived my broker security fund $10,000, under the act, a bill of attainder and ex post facto act directed against person holding Interstate Commerce Commission Authority. 49 U.S.C. § 13905 person holding I.C.C. authority deemed to be registered. 49 U.S.C. § 13906(b) the Secretary may register a person.

There is no independent federal subject matter for State claim Eleventh Amendment contentions. The plaintiff disagrees with U.S. Court of Appeals erroneous construction of law that dismiss claims, rights, and Government from the suit, and lacked power and authority over defendants in California who are more than 100 miles from federal Court. "Discrete geographic fragments and grammatical arcane underlying deprived property rather than proof of ownership in any State."

The Interstate Commerce Commission act, Pub. L. No. 104-88, Stat. 803. (1995), directed against person(s) holding I.C.C. authority in Interstate Commerce in any State. I.C.C. broker with all state authority and jurisdiction in any state. The I.C.C. Termination act gave the defendants discrete geographic fragments over 100 miles from the federal Court to deprive property, Insurance, and contract rights under "federal I.C.C. laws."

I.C.C. Termination Act, Pub. L. No. 104-88, Stat. 803. (1995) deprived property and rights, bill of attainder and ex post facto act with Governments sovereignty dismissal in court without a judicial trial or due process of law or just compensation are unconstitutional and violated my rights and claims under the Constitution of the United

States, Article 1., § 1., § 8., § 9., § 10., AMENDMENT V., AMENDMENT XIV.

Enactment of Federal legislation effective January 1, 1996,

49 U.S.C. §§ 13904., 13905., 13906(b)., 49 C.F.R. § 387, against person holding I.C.C. authority, deprive property, of all kinds, without a judicial trial or just compensation, or due process of law, are bill of attainder and ex post facto act. The Constitution of the United States forbids enactment of legislation that imposes a punishment or denies a privilege without a judicial trial or due process of law or just compensation.

Declare Interstate Commerce Commission act, Pub. L. No. 104-88, Stat. 803. (1995)., 49 U.S.C. §§ 13904., 13905., 13906(b)., 14701., 14705., 49 C.F.R. 387., Unconstitutional.

Reinstate my Independent Interstate Commerce Commission Broker licensing and Insurance, and Rights under:

Title 49 U.S.C. §§ 10924., 10927.,

CHAP. 104 – An act to regulate commerce §§ 2., 9., (1887)

CHAP. 382 – An act to amend an act entitled "An act to regulate commerce" § 16., (1889)., and the Constitution of the United States.

This case raise questions of *National importance* regarding Government sovereignty summary judgment with State and businesses depriving property, and loss of

Insurance, and contract plan failure, property deprived and auction off without fairness.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

April 13, 1999

Respectfully submitted,

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(617) 296-9671

United States Court of Appeals
For the First Circuit

No. 98-1572

SOLOMON UPSHAW,

Plaintiff, Appellant,

v.

U.S. DEPARTMENT OF TRANSPORTATION, ET AL.,

Defendants, Appellees.

Torruella, *Chief Judge*,
Campbell, *Senior Circuit Judge*,
and Lipez, *Circuit Judge*.

JUDGMENT

Entered: April 8, 1999

After the appellees moved to dismiss Mr. Upshaw's appeal under Loc. R. 27.1, we affirmed the dismissal of the government from the suit, but *sua sponte* ordered the remaining parties to brief the issue of the district court's subject-matter jurisdiction. After due consideration, we now conclude that the parties failed to establish jurisdiction. We *vacate* the award of summary judgment and attorney's fees to the remaining appellees and *remand* to the district court for dismissal of the suit without prejudice.

The appellant brought suit seeking the immediate return of funds held in a trust established to satisfy federal, property-broker, licensing requirements. The appellant's relevant rights to the funds were governed by

a private agreement (the "Agreement") which recited that it was controlled by California law. The appellees argue that the complaint raised a federal claim because it asserted, albeit wrongly, entitlement to the funds under federal law. 28 U.S.C. § 1331.

The argument is unavailing. The complaint cannot support federal question jurisdiction merely by invoking federal law; it must present a substantial federal question. *BIW Deceived v. Local S6, Industrial Union of Marine and Shipbuilding Workers of America*, 132 F.3d 824, 832 (1st Cir. 1997); *Bonanno Linen Service, Inc. v. McCarthy*, 708 F.2d 1 (1st Cir.), *cert. denied*, 464 U.S. 936 (1983). The rights of the parties in the present case were neither created by federal law nor dependent upon the resolution of any substantial federal question. Although federal law may be relevant to interpreting the parties intent under the Agreement, the mere relevance of federal law is insufficient to create a federal question. *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 813-814 (1986); *PCS 2000 LP, v. Romulus Telecommunications, Inc.*, 148 F.3d 32, 35 (1st Cir. 1998). The same considerations defeat the appellees' assertion that jurisdiction is conferred by 28 U.S.C. § 1337 (actions arising under acts regulating commerce). *Maritime Service Corporation v. Sweet Brokerage De Puerto Rico, Inc.*, 537 F.2d 560 (1st Cir. 1976).

Finally, since the suit lacks any federal foundation, it cannot be maintained under the court's supplemental jurisdiction, 28 U.S.C. § 1367. *Newman v. Burgin*, 930 F.2d 955, 963-964 (1st Cir. 1991), *cert. denied*, 493 U.S. 1078 (1990).

Vacated and *remanded*.

By the Court:

PHOEBE MORSE

Clerk.

[Cert. cc: Hon. Reginald C. Lindsay and Tony Anastas, Clerk. U.S.D.C. of Massachusetts, cc: Messrs: Upshaw, Taure and Gallagher]

United States Court of Appeals
For the First Circuit

No. 98-1572

SOLOMON UPSHAW,

Plaintiff, Appellant,

v.

U.S. DEPARTMENT OF TRANSPORTATION, ET AL.,

Defendants, Appellees.

Torruella, *Chief Judge*,
Campbell, *Senior Circuit Judge*,
and Lipez, *Circuit Judge*.

ORDER OF COURT

Entered: November 13, 1998

We *affirm* the dismissal of claims against the Secretary of Transportation.

At this time, we *deny* the motion of the remaining appellees to dismiss the appeal. The source of the district court's subject matter jurisdiction over the claims against the remaining appellees is not apparent. The parties have not addressed the issue. Rather than vacating the judgment, including the award of attorneys' fees, and remanding to the district court with directions to dismiss the claims without prejudice, we shall give the appellant and the remaining appellees three weeks from the date this order is entered to brief the issue of the district court's subject matter jurisdiction over the case.

Affirmed in part.

By the Court:

Tony Anastas

Clerk.

[cc: Messrs. Gallagher, Tauro, Upshaw]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 98-1572

SOLOMON UPSHAW,

Plaintiff-Appellant,

v.

U.S. DEPARTMENT OF TRANSPORTATION, ET AL.,

Defendants Appellees

ORDER OF COURT

Entered: December 14, 1998

Upon consideration of motion,

Leave is granted appellant to file his brief one day late.

By the Court:

Phoebe Morse, Clerk

By **JANICE M. O'NEIL**
Chief Deputy Clerk

cc: Robert J. Gallagher, Esq.
Christopher M. Tauro, Esq.
Solomon Upshaw

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 98-1572

SOLOMON UPSHAW,
Plaintiff, Appellant,

v.

U.S. DEPARTMENT OF TRANSPORTATION, ET AL.,
Defendants, Appellees.

NOTICE
ORDER OF COURT

ENTERED: September 28, 1998

The appellees' brief was due to be filed on **July 24, 1998.** To date, the brief for the appellees has not been received.

Since appellees has failed to file their brief, they will not be heard at oral argument except by permission of the Court. See Fed.R.App.P. Rule 31(c).

By the Court:

PHOEBE MORSE

Clerk.

[cc: Messrs: Upshaw, Tauro and Gallagher]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SOLOMON UPSHAW Plaintiff	)	Civil Action No. 97-12000-RCL
v.	)	
UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL Defendant	)	

JUDGMENT

The motion of the plaintiff for summary judgment is denied. The motion of the defendants, American Traffic Exchange, Inc., E.M. Morgan Trust Administration and David Carney for summary judgment is allowed. The motion of the Secretary of Transportation to dismiss is allowed. The plaintiff shall pay to the defendants American Traffic Exchange, Inc., E.M. Morgan and David Carney attorneys fees in the amount of $2,500.

/s/ TONY ANASTAS
Clerk 4/30/98

/s/ Reginald C. Lindsay
Approved 4/30/98

PM-25
(Rev. 1084)

INTERSTATE COMMERCE COMMISSION

LICENSE

No. MC-700014*

SOLOMON UPSHAW, D/B/A
U TRANSPORT LOGISTICS
(Washington, DC)

This License is evidence of the applicant's authority to engage in operations as a broker.

This authority will be effective as long as the broker maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043) and the designation of agents upon whom process may be served (49 CFR 1044). Applicant shall also render reasonably continuous and adequate service under this authority. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or will be, attached to this privilege.

The service to be performed is described on the reverse side of this document.

By the Commission.

VERNON A. WILLIAMS
Secretary

(SEAL)

NOTE: If there are any discrepancies regarding this document, please notify the Commission within 30 days.

No. MC-277869 (Sub-No. O-C)**
Page 2

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting; (1) for or on behalf of the United States Government, general commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.; and (2) general commodities (except household goods; commodities in bulk; classes A and B explosives; Poison A; liquefied compressed gas or compressed gas; highway route controlled quantity radioactive materials as defined in Section 173.455; or hazardous substances transported in cargo tanks, portable tanks, or hopper type vehicles with capacities in excess of 3,500 water gallon), between points in the U.S. (except AK and HI).

**This certificate cancels Certificate No. MC-277869 (Sub-No. O-C), issued September 22, 1994, and is reissued to correct applicant name.

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

PM-31
(Rev. 11/92)

INTERSTATE COMMERCE COMMISSION

PERMIT

No. MC 277869 (Sub-No. O-P)

U TRANSPORT CORP.
MATTAPAN, MA

This Permit is evidence of the carrier's authority to engage in transportation as a contract carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); and for passenger carriers, tariffs or schedules (49 CFR 1312).

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

The transportation service to be performed is described on the reverse side of this document. Service must be performed under a continuing agreement with one or more persons.

By the Commission.

Vernon A. Williams
Acting Secretary

(SEAL)

NOTE: If there are any discrepancies regarding this Permit, please notify the Commission within 30 days.

To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting general commodities (except household goods; commodities in bulk; classes A and B explosives; Poison A; liquefied compressed gas or compressed gas; highway route controlled quantity radioactive materials as defined in §173.455; or hazardous substances transported in cargo tanks, portable tanks, or hopper type vehicles with capacities in excess of 3,500 water gallons), between points in the U.S. (except AK and HI), under continuing contract(s) with commercial shippers or receivers of such commodities.

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.